

BRAD ALLEN BELL
Claimant

MIDWEST CONSTRUCTION COMPANY, INC.
Respondent

BUILDERS' ASSOCIATION SELF-INSURERS' FUND)
Insurance Carrier)

ORDER

ISSUES

- (1) Did claimant's accidental injury arise out of and in the course of his employment with the respondent?
- (2) Did the Administrative Law Judge exceed his jurisdiction in granting claimant's request for medical treatment and temporary total disability compensation?

Whether claimant's accidental injury was work related is a jurisdictional issue listed in K.S.A. 1997 Supp. 44-534a.

(1) Claimant alleges he injured his low back on June 3, 1997, while unloading guardrail from a truck while working for the respondent. Respondent is in the heavy construction business of building bridges and box culverts. At the time of the alleged accident, claimant had been employed by the respondent as a laborer since 1994. Claimant testified he felt a pop in his low back as he bent over to place one of the guardrails on the ground. The guardrails weighed from 150 to 200 pounds each, and he was unloading them with a coworker. Claimant testified he immediately notified his foreman of the accident. Claimant did not leave the job site but because of the pain he finished the remainder of the shift by lying in the front seat of the truck or by lying on the bridge railing.

The next day, June 4, 1997, claimant contacted orthopedic surgeon Kimberly J. Templeton, M.D., at the University of Kansas Medical Center (UKMC), Kansas City, Kansas, in regard to his low back injury. Prior to this incident, Dr. Templeton, on January 3, 1997, had removed a benign tumor from claimant's right hip. Claimant had returned to work from that surgery during the last week of April 1997. Dr. Templeton returned claimant to light work with a 25 pound lifting restriction. However, claimant testified the respondent did not honor those restrictions and required claimant continue to perform the regular heavy construction work. In fact, before respondent would allow claimant to return to work, respondent required claimant to sign a release that absolved respondent from any liability for any reoccurrence of claimant's non-work related right hip problem.

Dr. Templeton, on June 4, 1997, admitted claimant to the University of Kansas Hospital for a CT scan and pain control. The CT scan was negative for any evidence of pathology in claimant's right hip area where the tumor was removed and the bone graph took place. Because of claimant's radiculopathy symptoms, he was seen for consultation by orthopedic surgeon Glenn M. Amundson, M.D., a spine specialist at UKMC. An MRI examination revealed annular tears located at the lower lumbar vertebrae levels. Dr. Templeton discharged claimant from the hospital on June 6, 1997. She took claimant off work, prescribed medication, and physical therapy.

Claimant was next seen on June 24, 1997, by Dr. Amundson. Dr. Amundson's medical record indicates claimant was having slow but progressive relief from his back pain. Dr. Amundson indicated the MRI examination had revealed degenerative disc at the L3-4, L4-5, and L5-S1 levels. Also found was a Schmorl node at L4 with a surrounding bony inflammatory signal. Claimant was instructed to continue with the physical therapy and a TENS unit was prescribed for pain control.

Although claimant remained symptomatic, he did not return for further treatment with Dr. Amundson until March 24, 1998. The reason claimant had not returned for further medical treatment was because his claim for workers compensation had been denied. Claimant also testified the respondent terminated him in June 1997 after it found out he made a claim for workers compensation benefits. Claimant testified, at the preliminary hearing, he was unable to work full time performing any type of job because his symptoms

worsened with activity. Claimant testified that Dr. Amundson, during his March 24, 1998, visit, recommended claimant undergo additional diagnostic tests including another MRI in an effort to determine the exact location of the damaged disc in his low back.

The Administrative Law Judge found claimant had met his burden of proving that his current low-back problem was related to the lifting incident at work on June 3, 1997. The Administrative Law Judge ordered respondent to provide claimant with temporary total or temporary partial disability benefits, if appropriate, and medical treatment for his low-back injury. Respondent contends claimant failed to prove by competent medical evidence that his low-back problem is causally related to the lifting incident at work.

The Appeals Board disagrees with the respondent's contention and concludes the Administrative Law Judge's finding that claimant's current low-back problem is related to the lifting incident at work should be affirmed. The Appeals Board finds this conclusion is supported by claimant's testimony and the medical records admitted into evidence at the preliminary hearing.

Specifically, the Appeals Board finds, although claimant had a history of preexisting low-back problems, claimant established he was capable of performing the heavy construction duties as a laborer until the lifting incident at work on June 3, 1997. After June 3, 1997, claimant remained symptomatic and became worse with activity. The Appeals Board acknowledges the medical records admitted into evidence at the preliminary hearing do not contain a direct opinion from a physician that claimant's low-back problem is related to the June 3, 1997, accident. However, the Appeals Board finds the medical records as a whole do contain persuasive evidence that the lifting incident at work either caused claimant to suffer a new low-back injury or caused an aggravation of a preexisting low-back condition. The KUMC admission record dated June 4, 1997, indicates that claimant gave a history of the lifting incident followed by pain in his back, hip, and side. At the time claimant was discharged, Dr. Templeton completed a Work Status Report dated June 6, 1997, that diagnosed claimant with a torn annulus at L5 and took claimant off work until a return appointment in three to four weeks. The medical records also do not contain a medical release returning claimant to work.

(2) Respondent contends the Administrative Law Judge exceeded his jurisdiction by ordering it to pay claimant temporary total disability and, if appropriate, temporary partial disability benefits. Respondent argues there is no evidence in the preliminary hearing record that claimant was temporarily totally or temporarily partially disabled. Additionally, the respondent asserts the Administrative Law Judge can only order temporary total or temporary partial disability benefits from February 19, 1998, the date claimant filed its application for preliminary hearing.

The Appeals Board finds, as it has on numerous occasions, it does not have jurisdiction, at this stage of the proceedings, to review a preliminary hearing finding of the Administrative Law Judge in regard to temporary total or temporary partial disability

compensation. The preliminary hearing statute gives the Administrative Law Judge authority to grant or deny a request for either medical and temporary total or temporary partial disability compensation pending a full hearing on the claim. See K.S.A. 1997 Supp. 44-534a(a)(2).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Floyd V. Palmer's April 16, 1998, preliminary hearing Order for Compensation should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Wade A. Dorothy, Lenexa, KS
Administrative Law Judge, Topeka, KS
Philip S. Harness, Director